AGRICULTURE AND ENVIRONMENT COMMITTEE

Members present:

Mr JP Kelly MP (Chair)
Mrs J Gilbert MP
Mr R Katter MP
Mr JE Madden MP
Mr LL Millar MP
Mr PT Weir MP

Staff present:

Mr R Hansen (Research Director)
Mr P Douglas (Principal Research Officer)

PUBLIC HEARING—INQUIRY INTO THE LAND AND OTHER LEGISLATION AMENDMENT BILL 2016

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 15 FEBRUARY 2017

Brisbane

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Committee met at 9.03 am

CHAIR: Welcome, ladies and gentlemen. I declare open this meeting of the Agriculture and Environment Committee. I would like to start by acknowledging the traditional owners of the land on which we are meeting today. I am Joe Kelly, the committee's chair and member for Greenslopes. With me today are: Pat Weir, the member for Condamine and deputy chair; Julieanne Gilbert, the member for Mackay; Robbie Katter, who is not here at the moment but he will be back shortly, the member for Mount Isa; Jim Madden, the member for Ipswich West; and Lachlan Millar, the member for Gregory. The purpose of this meeting is to assist the committee in its examination of the Land and Other Legislation Amendment Bill 2016. The bill was referred to the committee on 19 April for examination.

I remind those present that these proceedings are similar to parliament and are subject to the Legislative Assembly's Standing Rules and Orders. In this regard, I remind members of the public that, under the standing orders, the public may not participate in proceedings and may be admitted to, or excluded from, the briefing at the discretion of the committee. Hansard is making a transcript of the proceedings which we intend to make available on our website. Those here today should also note that the media might be present, so it is possible that you might be filmed or photographed.

RAVEN, Mr Matthew, Chair, Property and Development Law Committee, Law Society of Queensland

SMYTH, Ms Christine, President, Law Society of Queensland

CHAIR: I would like to welcome our first witnesses from the Queensland Law Society. I invite you to make a brief opening statement.

Ms Smyth: I would like to thank you for the opportunity to appear before the Agriculture and Environment Committee in relation to the Land and Other Legislation Amendment Bill 2016. The Queensland Law Society is the peak professional body for the state's legal practitioners, over 10,000 of whom we educate, support and represent. In carrying out its central ethos of advocating for good law and good lawyers, the society proffers views which are truly representative of its members and practitioners. The society is an independent, apolitical representative body upon which government and parliament can rely to provide advice which promotes good evidence-based law and policy.

As outlined in its written submission, the society broadly supports the introduction of the legislation which supports the implementation of a nationally consistent e-conveyancing system. However, the society suggests that some aspects of the draft legislation could be clarified to reduce the risk of unintended consequences arising from specific drafting of the priority notices provisions. By not commenting on the full scope of the provisions of the bill, the society does not express endorsement or otherwise of the draft legislation.

We are concerned with two key issues here today. Our submission specifically relates to the part of the bill dealing with the introduction of the priority notice mechanism. The society wishes to highlight two particular areas. The first is the need to clarify the scope of the proposed new section 139 of the Land Title Act 1994 and who is entitled to lodge a priority notice. The society recommends drafting changes to clarify this issue as outlined in our written submission.

The second is the potential risk of repeated priority notices being lodged resulting in the mischievous or improper use of this process. The society acknowledges that these changes are intended to achieve national consistency, with the introduction of the term 'priority notice' benefiting organisations like banks which operate across state borders. The society is concerned that these changes are being introduced for the commercial expediency of some organisations at the risk of fundamentally altering the rights of all landholders in Queensland. I will ask Matthew Raven, our chair of the society's Property and Development Law Committee, to give further details of our concerns.

Mr Raven: I thought the best way to expand or explain our comments was to give some very brief background about what a settlement notice is, which is what is being replaced by a priority notice. Our land title system obviously is one of registration, so you become a registered owner and that is

notice to the whole world that you own the property. A very important concept of that is this issue of priority. The first person to lodge the documents in the land titles office generally receives priority over a later person.

I will explain that in a practical sense. If I were the owner of a property and I decided to fraudulently sell it to two different people, I could sign two contracts, we would have two settlements, I would give each buyer a signed transfer and they would both go off to the title office. The first one to actually lodge their documents in the land registry would become the registered owner and the second poor person would then have to track me down in my overseas hideaway and try to sue me to get the money back. The order of lodgement is fundamental to this idea of property settlements and the protections that registration gives you.

Many years ago, that problem that I just spoke about was overcome because you would have a paper certificate of title issued by the land registry. It was very fancy on blue cardboard, signed by the Governor, and we have got rid of those. I think over time we realised that a piece of cardboard is not particularly secure and that probably a grade 7 child with a laptop and a printer could come up with a fairly good approximation. It was realised a long time ago that that was not a particularly secure form of security. That was done away with in Queensland for most properties many years ago.

To overcome the risk of the scenario I outlined previously, we introduced the settlement notice. Essentially, a settlement notice is lodged on the title shortly before you attend settlement, if you are a legal practitioner acting for a buyer. At the same time you lodge, you would search and make sure no-one else has lodged a settlement notice. It gives notice to any other potential buyers out there, if you are dealing with a fraudulent vendor, that I am going to settle and pay the price. The settlement notice has two important effects—first, it stops any other dealings registering before my transfer is registered; and, second, it will give priority to my transfer when I actually lodge it. A settlement notice lasts for 60 days. As long as I settle within that time and lodge my transfer, if in the scenario I mentioned before, if someone else has got in and lodged a transfer before me without checking the title, my transfer will actually jump ahead of theirs because I have lodged a settlement notice, and that will give me priority over that one. It is a fundamental concept in this idea of settlement.

The changes that are proposed are relatively minor and we understand are to do with national standardisation. Obviously, the change of name is of no great impact—'settlement notice' to 'priority notice'. We really do not have an issue with that. We just raised a couple of fairly technical points in the drafting of the new legislation which we think may have unintended consequences, as the president has mentioned.

The first one is about when you have a right to lodge a settlement notice. At present, you would need to have a signed contract of sale or a mortgagee can also lodge them, so you would need a signed mortgage or loan agreement entitling you to lodge a mortgage. They are the only parties that can do that. We are just a bit concerned, and it may be unintentional, but section 139 allows to lodge a priority notice a person who is or will be a party to an instrument. That does not seem to require anything to have been signed. It potentially could be interpreted as allowing a person who has some future intention or wish to enter into a transaction with the owner of a property. We just think that drafting needs to be tidied up a bit to make it clear that there would need to be some contractual basis for you to lodge a settlement notice. That is the first point.

The second point is that at present there is a prohibition on lodging a settlement notice in respect of the same contract. You lodge a settlement notice shortly before settlement, it lasts for 60 days but if for whatever reason you cannot settle within 60 days it lapses and you cannot lodge another one on the same grounds. We think that is important because it prevents you clogging up an owner's title by sustaining a settlement notice to continually block the title and stop the owner dealing with the transaction. We do have some concerns that that may be misused.

If you look at a caveat, which is a similar mechanism if you like—it is also a block on the owner's title—they lapse after 90 days unless the lodger has notified the registry that they have commenced Supreme Court proceedings. In both cases at the moment—settlement notice and caveats—they only have a limited duration and the person who lodges them has to take some action to either show they have settled the transaction or commenced proceedings to prove their claim. We are just worried that the mechanism of allowing repeat lodgement of priority notices, one after another, could be used to circumvent the existing restrictions on clogging up an owner's title. That is really the crux of our points, if you would like to now ask questions.

CHAIR: Thank you. You note the potential risk of repeated lodgement of priority notices. This is a mechanism I believe that has been put in place to standardise our legislation with national legislation. What has been the experience interstate with this? Are there any examples of where this has occurred interstate, and how have they put protections in place interstate?

Mr Raven: I would not say I am an expert on the laws of every other state, but my understanding is they are quite recent. I think in New South Wales it is new, and Victoria is probably not a lot older. Queensland was I believe the first state to go electronic in terms of its title register. We have had settlement notices and done away with certificates of title well before all the other jurisdictions, so we have actually had a lot more experience and a lot more practice with this system. I would have thought that, if we were to adopt a national framework, the Queensland one was probably preferable given that we have had ours in place for longer than the other jurisdictions.

CHAIR: Ms Smyth, I think you used the phrase that this was to the benefit of the commercial expediency of some organisations. Can you expand on how this is to the commercial expediency of some organisations?

Ms Smyth: Yes, e-conveyancing is something that has really taken off in the southern states. It is a system that is promulgated and backed by a lot of financial institutions. It has not taken as much hold here in Queensland as it has elsewhere. The benefit of e-conveyancing is that it is all online, so you get a faster, quicker process. In order for that to occur documents have to be standardised because it is an electronic system. Where you have a priority notice, yes, the name has changed but it is more than a name change; it is an intent change. It is a different document to the settlement notice, and that is the concern there.

To align a priority notice with a system in other states you are actually changing what the settlement notice does, so it is more than a change of name. You are affecting the landholder's rights and you are broadening the rights of others to impact on a landholder, and that can have quite significant consequences. Let us take the hot topic of domestic violence at the moment, for example, which extends beyond mere physical acts; it goes into aspects of financial control. If you have a couple going through a family law property settlement who might have a property on the market, you may have parties involved and those systems can be abused.

As Matthew has already said, this particular system is new in those jurisdictions so there is not a lot of precedent to see how it works, but our great concern is that you are going from a settlement notice, which has a limited capacity, to a priority notice, which is extended. If you lodge a caveat you have to have an equitable interest. The fact is that a priority notice merely gives you a person who could be interested and that is less than the interest that a caveat has, so there is a significant change in the whole aspect of it. That is a concern for our landholders here in Queensland.

Mr WEIR: I was just going back to one of the comments you both made. You were concerned about the changing of this wording to priority notice, but does it need to be changed?

Mr Raven: Does it need to be changed? Just the name itself?

Mr WEIR: Yes, does it need to be changed from where it stands today?

Mr Raven: The whole thing, not just the word? We do not have any fundamental objection to using the same terminology. A priority notice, apart from these two aspects, is going to work pretty much the same as a settlement notice does now. They have broadened the scope so it is not just limited to transfers and mortgages. Any party to any kind of dealing could lodge a settlement notice. We are not sure why that is necessary, but it does not cause us grave concern. The short answer is no, we do not have any great problem with the concept of calling it a priority notice and standardising it to some degree. We just think these two particular aspects need to be looked at.

Mr WEIR: Section 139 needs to be reworded; is that right?

Mr Raven: That is all we think needs to happen there. That wording is not the same as that used in any other state. When we talk about standardisation, they have proposed to standardise the concept of a priority notice and the name, but no two states have adopted identical wording for their legislation.

Mrs GILBERT: The persons who are affected by the improper notice can go to court to have it removed, but you said it is unlikely to be commercially feasible in your report. Can you expand on that and why they would not do it?

Mr Raven: A typical contract is for 30 days and time is of the essence, which means that if you do not settle on the 30th day, depending on who is default, either party could terminate and walk away. The time and expense of going to court would rarely be feasible in a residential conveyance. Even if you get a hearing it would probably take 60 to 70 days to have it heard urgently. You would have barristers and lawyers and quite a tremendous cost. It probably would not be worth the effort.

Ms Smyth: There is an economic aspect to it as well as a timeliness aspect to it. You have people's lives on hold in order to deal with this issue, and when you have to initiate proceedings you have to consult with your solicitor. They have to give advice. You have to file proceedings. You have to get before a court. That all takes a lot of time and money, as Matthew says, which is an imbalance when someone can quite economically just simply lodge a priority notice without very much.

Mrs GILBERT: If you start court proceedings does that change that 30 days?

Mr Raven: On a priority notice, no. I guess what you would do is you would keep lodging them as it is presently worded. That is not going to be affected if you adopt what we have suggested, which is that you could lodge a caveat and then notify the registry that you commenced proceedings, and that would sustain the caveat. If you were concerned as a buyer that the seller was going to go off and sell it to someone else, there is a mechanism there to give you the protection that you need.

Ms Smyth: The difficulty is that with a caveat you have to have the capacity to sustain the caveat and there are some serious consequences if you do not. That is different with a priority notice.

Mr Raven: Well, no, there are sort of the same consequences. In both cases there is a right to compensation if you do it improperly. I guess our concern at the moment is the wording is so broad in terms of who is permitted to lodge a caveat that it would be very hard to show that someone had improperly lodged it.

Mrs GILBERT: When you said that you have to have the resources to be able to support the caveat, is that the financial cost?

Ms Smyth: No, you have to have a legal entitlement to support the caveat.

Mr MADDEN: First of all, I would like to thank you very much for coming in today. Mr Raven, I would like to thank you for explaining the complex process of transfers and settlement notices and this new priority notice that we have. I have a question with regard to this new electronic system that we are looking at introducing. You talked about the possibility of priority notices being used illegally or mischievously, I guess, would be another possibility. Under this new system if a solicitor or anyone were to lodge a priority notice, is a notification sent to the registered landholder?

Mr Raven: Not with a priority notice, no.

Mr MADDEN: So the only way you would know would be by doing a search?

Mr Raven: Yes.

CHAIR: In relation to, 'A notice for a lot may be deposited by or for a person who is, or will be, a party to an instrument,' do you have any suggestions on how we would better define the second part of that?

Mr Raven: Drafting on the run is very dangerous.

CHAIR: Perhaps more what kind of people it should encompass.

Mr Raven: At the moment it is very clear that you have to sign a contract or a mortgage, but obviously we cannot just keep the same wording because we are extending the application to any type of dealing. New South Wales legislation talks about a person who has entitlement to a legal or equitable estate or interest in the property, so some words along those lines would be where we were thinking.

CHAIR: I do not think there are any further questions. Thank you very much for appearing this morning, Mr Raven and Ms Smyth.

HANNAN, Mr Luke, Manager, Planning, Development and Environment, Local Government Association of Queensland

CHAIR: I would ask you to make a brief opening statement and then we will proceed to questions.

Mr Hannan: The LGAQ welcomes the opportunity to provide feedback to the Agriculture and Environment Committee on the Land and Other Legislation Amendment Bill 2016. In summary, the LGAQ's submission before you is largely supportive of the amendments included in the bill, with the majority of the recommendations in the submission seeking further clarity and refinement. I trust these improvements can be included through minor amendments to the bill.

The primary concern of local governments about the bill is with regard to the proposed amendments to section 50 of the Land Act regarding vacation of office by trustee. These proposed amendments essentially remove a council's ability to resign without condition or restriction and, most importantly, undermines the relationship between the state government and its 18,660 local government trustees. This may lead—and I emphasise 'may'—to diminished outcomes on the ground for local communities through creating additional bureaucratic red tape and delay in approval processes and force councils to actually closely consider whether they accept future reserve dedications in the first instance and whether they should decline to grant trustee leases or other types of leases and simply refer applicants back to the state for the granting of state leases. Again these would be less than optimal outcomes.

As per the LGAQ's submission, these amendments did come out of left field and we have not seen any systemic issue to justify a seemingly heavy-handed regulatory response. Mr Chair, I do acknowledge that the department has recently had discussions with the LGAQ regarding the matters outlined in the LGAQ's submission, and I am confident they understand our concerns and the potential outcomes of these proposed amendments—more specifically, the proposed amendments to section 50. Based on these discussions I do understand the intention of the amendments was to create a suitable transitional provision for resignations to occur; however, if this is the case I believe a sledgehammer has been used to crack a nut and I would encourage further options to be explored such as using provisions to provide for a notice of surrender period.

Notwithstanding that, may I congratulate the department for their open and positive discussions to date with the LGAQ and local government more broadly on land tenure reforms. It is, and has been, a pleasure to work with them. The LGAQ supports future land tenure reforms that promote local government in driving economic growth and establish a modern, nation-leading and adaptable framework for state land.

Mr WEIR: You said that you have had discussions with the department about section 50 and you seem to be a bit more comfortable with that. Could you explain that to me?

Mr Hannan: From discussions with them I understand that the rationale was to seek a transitional arrangement; however, it is a broad regulatory response that has been applied, hence I used the phrase using a sledgehammer to crack a nut. There could be some perverse outcomes if it is adopted as proposed, so we are seeking further exploration of other options to deliver the rationale that the department is seeking.

Mr WEIR: Would you care to give an example of what you think those perverse outcomes may be?

Mr Hannan: It may lead councils to either not accepting land, that is, reserve dedications in the future, because it will make them stop short because it undermines basically the resignation entitlement they currently have, or simply referring applicants to the state for the granting of state leases. That would be a poor outcome because it would bog the department and state down in applications and apply further red tape, so it would deliver poor outcomes on the ground.

Mr MADDEN: Thank you very much for coming in today, Mr Hannan. I have a question with regard to trusteeship with regard to local government. Can you give me an example of where local government officers are trustees over land? I am aware of showgrounds and situations like that where you have trustees of public lands, but are we talking about road reserves and water reserves?

Mr Hannan: It is wideranging. As I stated, there are 18,660 so it could be better question for the department on how far that range is. The majority of trustees are local governments in the state, hence there is a direct relationship between the state government and local government and how it operates.

Mr MADDEN: Is it the council that is a trustee or the officers who are trustees?

Mr Hannan: It is the local government.

Mr MADDEN: Can they opt not to be a trustee under this legislation?

Mr Hannan: Yes, they can and that could potentially be one of the perverse outcomes.

CHAIR: Let us say we have a reserve of land that could be for a road, a watercourse, common parkland or something of that nature. If a council opts out, does land effectively revert back to the state for care and management?

Mr Hannan: That is correct.

CHAIR: Do councils actually look to opt out? Has it happened in practice?

Mr Hannan: I believe it has, but not very often. I do not have any information at hand in terms of the numbers in most recent times, but it could be a very good question for the department.

CHAIR: From reading your submission, would it be more of a concern for the LGAQ, not so much the relinquishing of that responsibility but more that this change may make councils more reluctant to accept that responsibility?

Mr Hannan: Yes, agreed.

CHAIR: I am thinking about some examples in my electorate where we still have some small parcels of land owned by the Department of Natural Resources and Mines and there have been some discussions about moving those towards councils. Is that the sort of thing that you are talking about, where council might say, 'We are happy to take them on, but if we can never get rid of them that might not be something that we want'?

Mr Hannan: The draft provisions proposed under new section 50(3) (a), (b) and (c) are quite wide-ranging. From our interpretation, and we have sought legal opinion, it could come down to the disposition of the minister of the day, particularly under section 50(3) (b) where basically you have to determine that it is in the best interests of the state. How wide is that range and that interpretation could be quite difficult to determine. If it is, in fact, the true intent as I outlined earlier regarding the transitional provisions, there are some precedents set in the Land Act already regarding providing a transition period so the state has time to consider how that land would be managed in the future and resourced appropriately. A transitional provision could be incorporated that alleviates that concern.

Mrs GILBERT: I want to ask you about the mandatory standard of terms, where you say that it is a waste of time and an imposition on council. How frequently does this have to happen within a lease? Is it just once in the lifetime of a lease or is it quite often that you are having to change the names and the terms to fit in with the standard terms?

Mr Hannan: That is a good question that I will need to take on notice.

CHAIR: There are no further questions. Mr Hannan, thank you very much for appearing today. You have taken one question on notice, so the secretariat will follow up with you in relation to that. Thank you very much.

Mr Hannan: Thank you, Mr Chair.

HEWITT, Ms Lauren, General Manager, Policy, AgForce Queensland

CHAIR: Good morning and welcome, Ms Hewitt.

Ms Hewitt: Thank you, Mr Chair. I am the general manager of policy at AgForce Queensland, the broadacre lobby group for broadacre producers in Queensland.

CHAIR: I invite you to make a brief opening statement, after which we will move to the committee for any questions.

Ms Hewitt: I thank the committee for inviting AgForce here. We come today to speak about one clause only, which is clause 11. What many people in Queensland do not realise is that over 50 per cent of Queensland is actually term lease and it is pastoral lease. The state holds that lease and they rent it out for pastoral purposes, for anywhere from a couple of years up to 50 years or so. It can vary dramatically and there are thousands of lease instruments. Those leases sell on the open market, the same as freehold properties do, and they attract the same consideration, so we are talking about potentially millions of dollars.

Over the past 10 years, lessees have seen three different renewal methodologies used to determine how, when, if and why they should get a new lease or their current lease renewed. We went from automatic leases to something called the Delbessie framework and currently, under the Land Act changes of 2014, we are on something called rolling leases. The rolling leases were brought in after a parliamentary committee found that, by and large, the lessees who held those leases had managed them well and needed to have greater security and certainty in their leases, because of the way they operate.

As I said, today I am here to talk only about clause 11 of the bill. It seeks to reduce certainty and flexibility by limiting the number of times a rolling lese can be renewed to only one per term. Already, these leases cannot apply for renewal until the last 20 years of the lease, but we see further limitations on that by clause 12 saying, further than that, they are only allowed one roll per lease per term. It is correct to say that there are very few people within the industry and very few people even amongst those lessees who would understand how the rolling lease provisions work. There would be even fewer who understand or would even be aware that such a clause exists and would further try to limit that. I have had a few people, probably only from within the industry, discuss whether this clause has merit and why it is there. There is really no certainty about why. I will talk to that later.

Nonetheless, we think that this provision does further limit the very stringent conditions that are already placed on term leases, which do not have a hell of a lot of security or certainty in front of them. I am happy to stand corrected if I have misread or misinterpreted the provisions, but as we see it clause 11 does limit the number of renewals on a rolling-term lease to one per term, which is different and it is a reduction in security. The explanatory notes have provided absolutely no detail about why the change is there. When I approached the department back in December when the bill came forward, I could not get any further explanation about the reason for the clause. There may be merit, but as yet I have seen none. I have not seen the responses to the submissions that presumably the department put forward. As I said, I stand willing and able to have a further discussion on what issues arose such that they thought that this clause was required, but as yet I am unwilling to endorse the amendments that limit further the flexibility that we are going to require.

As I said, there are thousands of those leases and many and varied circumstances. As the member for Mount Isa would understand, thousands and thousands of leases change hands every day, the same as with freehold land. What people generally would try to do is build into their leases the maximum number of years ahead of them. They might seek to renew early. Often we would urge them to seek to renew early, even before the last 20 per cent or 20 years of their lease, to try to build up, particularly in the instance of a sale, the number of years ahead of them. We think that is a perfectly valid thing for people to do. They do it by request of the minister. Certainly we assist them in managing their lease in what is a fairly inflexible framework.

Yes, there are likely to be few people who are going to be affected by this clause. Not many people are aware of how it operates. Yes, rolling leases are quite a good framework. In fact, they are the best framework that we have developed so far. They still do not allow our leases to be dealt with in a really flexible manner, which you are going to need to do when you have thousands of these instruments sitting in front of you. You do not know what circumstances people have and they may well have reason to go for this. Yes, allowing them to renew more than once per lease per term does create more paperwork, but indeed the lessees pay for that. My understanding is that they pay a couple of hundred dollars in renewal fees. Yes, this may not be the biggest issue facing the committee or broadacre members around the state, but we bring it to your attention nonetheless because we have seen no justification for the clause being put forward and, therefore, we oppose this clause going forward.

CHAIR: Thank you, Ms Hewitt. Deputy Chair, would you like to commence questioning?

Mr WEIR: Have you had any discussions with the department about your concerns on this one clause?

Ms Hewitt: Yes. Back in December or November when the bill was first put forward, I approached the department, just to see if there was any logic and to ask why. They did get back to me with an explanation of how it would operate. I am aware of the mechanics of how it will operate; I just do not understand the reason. Is there some frivolous or serial litigant or pest who is going for renewals or something? There might very well be a valid reason, but not in the explanatory notes and not that I have received in a response to date.

Mr MILLAR: Have you approached the minister? You have approached the department and not got a response. Have you approached the minister and made some representation there?

Ms Hewitt: No.

Mr MILLAR: Can I ask why not?

Ms Hewitt: I guess this hearing was on the books, so we sought to include it in the submission and have it addressed here, rather than bother the minister.

Mr WEIR: You also commented that it would affect the market value of those properties. What do you mean by that?

Ms Hewitt: When I was writing this submission, I had a particular lease in mind. It is one of our bigger members who is essentially going through a family succession at the moment. He does not hold the lease; his parents do. He and his brother will take over that lease in the next few years. That lease was rolled in 2014, along with the majority of them. They were rolled that way. However, at the time of transfer, they had thought that they would seek an early renewal on that, to bolster the number of years ahead of them, that expiry date. They would not have been within the last 20 per cent of their term. They just would have been sitting outside. It is purely for bank and valuation purposes to have the maximum number of years in front of you at any one time. As we know, in the past 10 years we have had three amendments or three different types of systems in place. We do not know what is going to happen in the future and we need the best deal that we can take at the moment. I will be frank about that: all we have ever seen, generally, is lease terms and conditions tightened. Albeit the rolling leases are a great framework, we want to maintain maximum security and maximum certainty.

Mrs GILBERT: What is the standard length of a lease?

Ms Hewitt: There is no standard length of a lease. As the department will probably explain later, they are many and varied, so you can have very short ones, the medium range might be 30 and then you might have a 50-year lease. Can you get 60? Lyall cannot comment from the back of the room. They are all over the shop.

Mrs GILBERT: You were saying that there is no flexibility now. What is it that you are actually seeking on behalf of your members around flexibility?

Ms Hewitt: The base game is that you need to maintain flexibility in the system to renew early, because of circumstances that may arise. At this stage, we would love our term lessees to be able to hold their land in freehold. That is not an option for them at the moment, because of the way native title is written in the state and federal parliaments, so they are stuck as term lessees. They will never, effectively, be anything else. The one thing that they have in front of them is this term, so they know at any one day they might have a lease until 2030 or 2050 or whatever. We just want to make sure that they can apply early, if needs be. Circumstances may arise that may mean that they want to or need to. We want to make sure that they have the most number of years in front of them. We merely see this as limiting the ability for them to do that.

Mr MILLAR: Lauren, I want to go back to your concerns about clause 11. When you approached the department, did they come back with anything? Did they come back with an explanation of any kind? You said they did not give you a satisfactory one, but did they come back with an explanation?

Ms Hewitt: Yes, they certainly did. They came back with an explanation about how the mechanics of it would work in a number of ways. It was a little further explanation on how the mechanics of it would operate, but to me what was missing in there was a rationale about why the change was required.

Mr MILLAR: When you asked them to explain the rationale, what was their response?

Ms Hewitt: Nothing that gave me any satisfaction to know that that was a valid change in the framework.

Mr MILLAR: I understand where you are coming from. As well as Mount Isa, the seat of Gregory has rolling-term leases. The security around leases is essential for valuations for properties and, obviously, farm succession, as you mentioned before with the family with the two boys who are taking over. What impact would this have on valuations or security and for farm succession to continue, to be able to make it a smooth transition? Do you think what they are doing in clause 11 could have impacts?

Ms Hewitt: Our concern is that it does. Obviously, with these leases, because their duration is many and varied, it will have different impacts depending on the lease and what the circumstances are, particularly if you are looking to transfer or change ownership of that lease. That is when it is probably going to have the most impact. If it is mortgaged, the bank will look at how long you have ahead of you and those sorts of things. That is what we raised in the submission and asked this committee and the department to look into it further, to seek advice from the banking sector, the valuation sector, about what the impacts might be.

Mr MILLAR: Like you, I am scratching my head over what clause 11 is all about and what they are trying to achieve, given that in 2014 we had the rolling term leases. We were in a good area to try to get some certainty around that. Does clause 11 have an impact that reverses that?

Ms Hewitt: I would not say `reverses'. The framework is still there and the majority of lessees will choose to roll in the last bit of their lease, because that is when the department will send them the automatic letter. For those proactive guys who might be seeking to do something outside of the norm, that is when we are saying that you want to maintain flexibility in the system for them to renew early.

Mr MILLAR: Thank you.

Mr KATTER: I want to tease out that issue of flexibility. Specifically, I am wondering if there was any discussion or scope there that included minor tourism in some of those leases. I do not think that it is very common, but I know that there have been a couple of issues in my area where it has made it really difficult to try to undertake a minor tourism operation. As soon as they start growing it, it conflicts with the term of the lease. Is that an example of the sort of flexibility that could come in there?

Ms Hewitt: Yes, it is another way. Certainly, we have had the same, I suspect, members being impacted by that with their tourism enterprise, which is a subsidiary of the pastoral purpose, which is grazing. These are the sorts of things that term lessees could find themselves in situations where they cannot do—

Mr KATTER: It is really difficult.

Ms Hewitt: They have to operate by and large for pastoral purposes. They are locked into a set of things that they can and cannot do on the leases. You are right, member for Mount Isa. These are the sorts of issues they face.

CHAIR: Member for Mount Isa, do you have any further questions?

Mr KATTER: You talked about maintaining values. Can you give the committee the sort of values you are talking about when you are trading and your lease terms are compromised and those sorts of things? I imagine that is exacerbated now that the market is a bit more stressed. Can you comment on that?

Ms Hewitt: I have not spoken to a valuer about what impact this clause will have if you had, for example, a lease that was due to end in 2030 and then you could not roll early. We are talking about lessees who might have $50 million or $60 million worth. That is what they are trading for on the open market. Obviously, we have a hell of a lot of foreign interest, but any buyer will pay more the longer the term is ahead of them. It is a significant factor that plays in what that value will be.

Mrs GILBERT: You keep referring to the value of the lease and the length of time that the lease has to run and people wanting to renew it early. How prevalent is it that somebody would apply to renew their lease and it is knocked back?

Ms Hewitt: I am not aware of the statistics on that.

Mrs GILBERT: It is only really on paper? If I bought a lease from you and it had five years to run and then I applied to roll it over, most likely it would be rolled over?

Ms Hewitt: I have never had anyone approach me to say that the department has knocked them back for renewal, no.

Mrs GILBERT: There is no precedent to say that, if I sold my $5 million lease to Joe and he had only a short time to run that, he not be able to keep rolling it?

Ms Hewitt: He can roll the lease, certainly, and I suspect that the department would be fine with that if he made application outside of the 20 per cent term. The issue is then he would not be able to roll it again within that term. If you have something that has a 30-year duration and you roll early—you will be rolling at the start of that block—you will not be able to roll again until right at the end. The issue is that you might want to roll it every 10 years. You might want to roll it every five just so that you have an extra five or 10 ahead of you. Does that make sense?

Mrs GILBERT: Yes. Why would you not just wait until you were in your time frame if you are not going to get knocked back? If there is no history of the department knocking graziers back when they want to renew their lease, why not just wait until that time frame?

Ms Hewitt: Some lessees merely want to do it so that they have the maximum in front of them. As I said, we have had three different frameworks in 10 years. Who knows what the next framework will be? We always say to our people, `Take the maximum term you can possibly get.' We have no idea what is in front of us and that is why. The majority will likely wait until they get their letter from the department in the mail, but there will be people who will want to do it early because they have heard something, they know something. They just want to have as much as possible in front of them.

Mrs GILBERT: It is just a sense of security?

Ms Hewitt: Yes.

Mr MADDEN: Thanks very much for coming in today. I just wanted to clarify this. Under clause 11, I see that no application can be made to extend the rolling term of the lease until the lease is within 20 years of the end of the term. If we are looking at a situation that the landholder cannot apply until they are within that 20-year period, is it AgForce's position that a landholder should be able to apply at any stage during the term of the lease, or should it be 50 per cent through?

Ms Hewitt: We have previously made representation that it should be at any time.

Mr MADDEN: At any stage?

Ms Hewitt: Yes.

Mr MADDEN: I just wanted to clarify that. Thanks very much.

Mr WEIR: I was wondering if this would have any impact on somebody who was considering freeholding? If they could apply earlier, it would give them more certainty, more time?

Ms Hewitt: No, because these are term leases. Native title still survives on them. Generally, they are not eligible to be freeholded. Perpetual leases are generally being freeholded.

Mr MILLAR: I want to pick up from what the member for Mackay said. Lauren, you are in the best place to explain this. The concern of our graziers is that they have multimillion dollar operations. They have stock and equipment. A lot of those areas that we are talking about are on a rolling term lease. Does it make it hard for them to go into banks to renegotiate overdrafts, continue lending? Certainty around leases is always going to be something that the bank will always bring up first—tenure; would that be right?

Ms Hewitt: It is usually something that, yes, they will definitely want to know.

Mr MILLAR: Yes. If your tenure is good, it is not really an issue but, if your tenure is under a cloud, can it have an impact on interest rates? Can you be seen as a risk? Are you looking at those sorts of issues?

Ms Hewitt: Our understanding is that banks generally treat the security for different lease types differently. As the member for Gregory has pointed out, perpetual leases are generally the most secure. They endure and do not have an expiry late. Term leases are probably the next secure. They often might have 30 or 40 years but, certainly, a bank will look at that and they will assess that in terms of risk, capital, security—all of those things—and they will make decisions accordingly. At the very lower end of the scale, you have things like state forestry leases, which seem to change every few years and have a couple of years in front of them.

CHAIR: Could some farm businesses be in jeopardy of ceasing to operate if there is that degree of uncertainty around the future of a lease?

Ms Hewitt: No, I do not think that that is the case. As I pointed out, I think very few people understand the framework or are even aware that they can renew early. Nonetheless, I do not think that this clause is justified on the grounds that I have seen. I think the onus is on the department to explain why it needs to be there. The bipartisan committee that looked at this framework extensively over a three-year period the last time decreed that we needed to maintain maximum flexibility in these leases. That is our stance.

CHAIR: Any further questions? Thank you very much for coming in this morning, Ms Hewitt. We will now pause for a break and resume again at 10.15 am.

Proceedings adjourned at 9.54 am.